

**CIVIL SERVICE COMMISSION MINUTES**

**July 3, 2024**

A meeting of the Civil Service Commission was held at 2:30 p.m., in-person in room 402-A at the County Administration Center; 1600 Pacific Hwy.; and via Videoconference/Teleconference.

Present:

P. Kay Coleman  
Bryan J. Fletcher  
Will Rodriguez-Kennedy  
Peter B. Smith

Absent:

A. Melissa Johnson

Comprising a quorum of the Commission

Support Staff Present:

Todd Adams, Executive Officer  
Morgan Foley, Commission Legal Advisor.

**Approved**  
**Civil Service Commission**  
**August 7, 2024**

**SAN DIEGO COUNTY CIVIL SERVICE COMMISSION  
MEETING MINUTES  
JULY 3, 2024**

- 1:30 p.m. CLOSED SESSION: Discussion of Personnel Matters and Pending Litigation
- 2:30 p.m. OPEN SESSION: Attend in-person at the County Administration Center, 1600 Pacific Highway, 4<sup>th</sup> Floor, Room 402A, San Diego, California; or
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Notice pursuant to Government Code Section 54954.2.

**CLOSED SESSION AGENDA**  
**County Administration Center, Room 458**

Members of the public may be present at this location to hear the announcement of the closed session agenda.

- A. Commissioner Rodriguez-Kennedy: CONFERENCE WITH LEGAL COUNSEL - PENDING LITIGATION (GOV. CODE SEC. 54956.9(a)) **2023-027**, former Psychiatric Nurse, Health and Human Services Agency, alleging discrimination by the Health and Human Services Agency.
- B. Commissioner Fletcher: CONSIDERATION OF PUBLIC EMPLOYEE DISCIPLINE (GOV. CODE SEC. 54957(B)) David Fujimoto, Esq., on behalf of **2023-052**, former Supervising Correctional Counselor, appealing a Final Order of Termination and Charges from the Sheriff's Department.

**OPEN SESSION MINUTES**

**ORDER OF BUSINESS**

A. **ROLL CALL**

**Present:** Coleman, Fletcher, Rodriguez-Kennedy, Smith

**Absent:** Johnson

B. **APPROVAL OF MINUTES:** Regular meeting of May 1, 2024.

**Motion by Commissioner Rodriguez-Kennedy to approve the minutes of May 1, 2024; seconded by Commissioner Coleman. Motion passed:**

**Ayes:** Coleman, Fletcher, Rodriguez-Kennedy,  
Smith

**Nays:** None

**Abstentions:** None

**Disqualified:** None

**C. NON-AGENDA PUBLIC COMMENT:**

None.

**D. AGENDA ITEM DISCUSSION:**

None from Public.

*Commissioner Smith:*

*Before we go further, I would like to make a comment. Recently my adult and independent daughter, Caroline Smith, was appointed to be the Interim Deputy Chief Administrative Officer/Director for the Health and Human Services Agency. Because she is my daughter and because she is also a source of income, I will no longer be participating in any way in matters before this Commission that affect the Health and Human Services Agency. I will not be assigned any cases from the Health and Human Services Agency, nor will I vote or participate in discussions on items on this and future agendas that affect the Health and Human Services Agency.*

**E. FORMATION OF CONSENT AGENDA**

Agenda Item No. 8 was withdrawn. Item Nos. 6 & 7 are automatically pulled for discussion.

Item Nos. 1-5 and 8-11 are available for approval on the Consent Agenda.

**Motion by Commissioner Coleman to approve the Consent Agenda; seconded by Commissioner Rodriguez-Kennedy. Motion passed:**

**Ayes:** Coleman, Fletcher, Rodriguez-Kennedy,  
Smith.

**Nays:** None

**Abstentions:** None

**Disqualified:** Commissioner Smith disqualified for voting on anything related to Health and Human Services

**F. DISCUSSION ITEMS:**

**AGENDA ITEMS**

**CONFIRMATION OF ASSIGNMENT**

1. Commissioner Fletcher: Bradley M. Fields, Esq., on behalf of **2023-058P**, former Deputy Sheriff, appealing an Order of Termination and Charges from the Sheriff's Department. (Previously assigned to Commissioner Johnson.)

**Confirmed.**

2. Commissioner Smith: Rico J. Dominguez, Esq., on behalf of **2024-009P**, Deputy Sheriff, appealing the Citizens' Law Enforcement Review Board's sustained finding. (Previously assigned to Commissioner Johnson.)

**Confirmed.**

3. Commissioner Coleman: **2024-029**, former Human Services Specialist, alleging discrimination by the Health and Human Services Agency.

**Confirmed.**

4. Commissioner Rodriguez-Kennedy: **2024-030**, Senior Deputy County Counsel, appealing a Final Order of Suspension and Charges from the Office of County Counsel.

**Confirmed.**

5. Commissioner Fletcher: Greg Thedell, Advocacy Center Organizer, SEIU Local 221, on behalf of **2023-001**, Office Assistant, Health and Human Services Agency, alleging discrimination by the Health and Human Services Agency. (Previously assigned to Commissioner Johnson.)

**Confirmed.**

## DISCRIMINATION

### Findings

6. Commissioner Rodriguez-Kennedy: **2023-027**, former Psychiatric Nurse, Health and Human Services Agency, alleging discrimination by the Health and Human Services Agency.

*Commissioner Smith is disqualified from the discussion on item no. 6. He passed the chairman gavel to Commissioner Rodriguez-Kennedy for this discussion and exited the meeting room during discussion, and voting.*

### FINDINGS AND RECOMMENDATIONS:

The Civil Service Commission appointed, Commissioner Will Rodriguez-Kennedy, as its member to be the Investigating Officer in the matter of the complaint submitted by Employee 2023-027, former Licensed Psychiatric Registered Nurse, which alleged discrimination based on gender and retaliation by the Health and Human Services Agency. In accordance with the established rules and procedures of the Commission, the matter was concurrently referred to the Office of Ethics and Compliance ("OEC") for investigation.

The OEC concluded the discrimination investigation and has reported its findings to the Commission. This Investigating Officer has received and reviewed OEC's report and has taken into consideration all documentation submitted in this matter. This Investigating Officer concurs with OEC's report and has concluded that: the evidence does not support a finding of probable cause that a violation of discrimination laws occurred.

Commissioner Rodriguez-Kennedy therefore recommended that Employee 2023-027's Rule VI discrimination complaint be denied; and that the Commission approve and file this report with a finding of no probable cause to believe that the Complainant has been unlawfully discriminated against.

**Motion by Commissioner Rodriguez-Kennedy to approve the decision by the Commission; seconded by Commissioner Coleman. Motion passed:**

**Ayes:** Coleman, Fletcher, Rodriguez-Kennedy

**Nays:** None

**Abstentions:** None

**Disqualified:** Smith

**DISCIPLINE**

**Findings**

7. Commissioner Fletcher: David Fujimoto, Esq., on behalf of **2023-052**, former Supervising Correctional Counselor, appealing an Amended Order of Termination and Charges from the Sheriff's Department.

**FINDINGS AND RECOMMENDATIONS:**

Employee 2023-052 ("Employee") appealed an Amended Order of Termination and Charges removing him from the position of Supervising Correctional Counselor in the Sheriff's Department ("Department"). The Commission appointed, Commissioner Bryan J. Fletcher, to hear the appeal and submit findings, conclusions, and recommendations to the Civil Service Commission. Thereafter, a hearing was held on May 6, 2024.

The causes of discipline were three (3) charges of incompetency, two (2) charges of conduct unbecoming, and one (1) charge of acts incompatible with and/or inimical to the public service.

The Employee was hired to the position of Correctional Counselor in the Department in or around February of 2016. In May of 2018, the Employee was promoted to Supervising Correctional Counselor. He remained in this position until his removal on February 15, 2024.

Sometime prior to August 18, 2022, the Employee obtained a handgun from a friend who had relocated from California to Texas but was in California for a brief visit. The friend had transported the handgun to California with plans to sell it to a licensed arms dealer in California. Employee expressed interest in purchasing the handgun but wanted to test it first. The friend agreed to allow the Employee to take possession of the handgun for the purpose of testing it at his convenience, while he returned to Texas. The agreement was for the Employee to purchase the handgun upon his return from Texas in two weeks.

In the morning of August 18, 2022, while on approved time off, the Employee went to a 24-Fitness gym in Oceanside to

work out. He worked out for one to one and one-half hours. While working out the Employee met with a "gym buddy." Following the workout, they smoked cannabis in the Employee's car in the parking lot outside the gym.

The Employee's mother passed away in 2007, and was interred in the Mount Hope Cemetery, in San Diego. Her birthday was August 18<sup>th</sup>.

Approximately five to five and one-half hours after smoking the cannabis in the parking lot the Employee visited his mother's grave site at Mount Hope Cemetery. After visiting the grave site, he returned to his car, then once again left the car to dispose of trash. At the time he walked from his car to the trash receptacle, and returned to his car, he was carrying a large gray satchel.

During the time that the Employee was at the Mount Hope Cemetery members of the San Diego Police Department Street Gang Unit (the "Unit") were parked in and around the cemetery, observing the funeral of a member of a local gang. Such surveillance is common for the Unit as it is common for these services to attract a significant number of observers who are members of the decedent's gang. It is known that in such situations, because attendees include gang members, rival gangs might also arrive, and violence might ensue. Therefore, those personnel in the Unit are trained to watch for firearms (exposed or hidden) that might be observable as in the possession of the attendees, or rival gangs taking advantage of the situation.

One member of the Unit, a detective, was parked in an undercover unit close by the Employee's vehicle. He observed the Employee's activities of, first, walking to his mother's grave site, then return to his car, then second, leaving the car to walk to the trash receptacle and return to the car, carrying the gray satchel. During this second walk, Employee turned his head and looked directly at the detective in his undercover vehicle.

The detective's training has made him familiar with the use of satchels by gang members for carrying a handgun. The gray satchel carried by the Employee was of the size and shape (due to the unknown contents) of those that the detective's training raises suspicions of containing a handgun.

When the Employee departed the cemetery, the detective radioed other, uniformed, officers present stating his suspicions that the Employee might be a member of a street gang.

Upon departing the cemetery in his vehicle, the Employee was followed by a marked San Diego Police Department and subsequently pulled over for excessive window tinting of his vehicle's front windows.

During the traffic stop an officer smelled what she knows to be the scent of burned marijuana (cannabis) coming from the Employee's vehicle. Both officers then saw what appeared to be marijuana in the Employee's vehicle, including a small glass jar containing green leafy substance on the passenger's seat; a plastic bowl filled with burned ash, small remnants of a green leafy substance, and burned marijuana wrapped in brown paper (i.e., a joint, suspected as marijuana due to its contents being a green leafy substance, and not tobacco). She also observed small pieces of marijuana leaves on the Employee's lap, and small holes in the front of the Employee's pants.

While still in his vehicle, the Employee was asked by an officer whether he had been smoking marijuana, to which he replied, "I had it earlier." Shortly after this exchange, the Employee was asked if there was anything else in the car, to which the Employee responded, "Just right here," showing the officer a small jar containing marijuana, and then stated, "home grown." After another question, the Employee stated, "I haven't smoked anything, I'm not high; I don't have anything in the car."

In order to conduct a "contraband search," as a result of observing the marijuana and other items associated with marijuana, the Employee was asked to step out of his car. The Employee obliged and was handcuffed and placed into the officers' patrol vehicle.

The Employee didn't disclose to the officers that the gray satchel contained a handgun. During the contraband search an officer found the satchel on the right rear passenger floorboard. Inside the satchel was the 9-millimeter handgun with two (2) loaded magazines that Employee had earlier received from the friend, the registered owner. After collecting and photographing the evidence the Employee was



transported to the San Diego Police Department headquarters for processing.

Although arrested for violating Penal Code sections relating to carrying a concealed weapon in a vehicle and carrying a loaded firearm on the person or in a vehicle when not the registered owner, the District Attorney's office declined to file a criminal complaint and denied that there is any pending action contemplated by their office.

Employee is guilty of incompetency for violating state and federal laws, and Department policies, by (1) consuming marijuana, a controlled substance, in a public place; (2) possessing an open container of marijuana in his vehicle; (3) possessing a handgun without having a license to do so; (4) carrying a concealed weapon on his person; (5) carrying a concealed weapon in his vehicle; and (6) possessing a firearm while being an unlawful user of marijuana in violation of federal laws, all on August 18, 2022.

Employee is guilty of conduct unbecoming for being in possession of an open container of marijuana in his vehicle together with a concealed weapon, resulting in his arrest by the San Diego Police Department on August 18, 2022. Regardless that the Employee was never charged with any crimes, the fact remains that (as a representative of the Department) it is expected that the Employee would conduct, both on and off duty, behavior in such a manner that it does not bring dishonor or disrepute to the Department and its reputation. Also, by providing false, evasive or incomplete responses and statements to law enforcement personnel, the Employee has further sullied the Department's reputation to another agency.

Employee is guilty of acts incompatible with and/or inimical to the public service when on August 18, 2022, the Employee's conduct in using, possessing, and transporting marijuana in an open container, as well as possessing, carrying, and transporting a concealed firearm, at the same time as using or possessing marijuana, was adverse to the Department's Executive Order and its Mission, Vision, Values, and Goals as set forth in its Policy and Procedure Manual. Such conduct was further inimical to the Department's Core values when the Employee should know that as a member of the Department it is expected that he possess the honesty, integrity, and trust, to do what is right even when no one is watching.

The Department believes that the Employee's actions leave no other option than termination of the Employee. Command staff believes that the violations are so serious that the Employee cannot be trusted to perform his duties consistent with the Department's policies, orders, philosophies, and expectations.

The Employee has expressed regret, and points to a prior decision as precedence for the Commission to follow by choosing, instead, to reduce the discipline, allowing the Employee to return to the Department with some appropriate suspension, but with an award of backpay.

However, this matter is not as similar as the Employee believes. The prior case involved use of marijuana under a doctor's prescription, and confusion over changing laws. In this case, there has been no evidence that the Employee believed that his actions in smoking marijuana in a public place, driving with an open container of marijuana, or possessing a concealed weapon on his person or in his car, were based on confusion over differences between Departmental policies, on the one hand, and changing laws at the state level, and changing policies at the federal level, on the other.

The Employee is trained as a Correctional Counselor, and was even promoted to a Supervising Correctional Counselor, with the responsibilities to assist detained inmates of the Department's detention facilities on what is right and wrong, with the goal of reducing recidivism. Yet he disregarded his own training to make so many bad choices on that day in August of 2022, that this Hearing Officer cannot support a decision to reject this discipline and return him to his position.

Based on the findings and conclusions set forth above, I hereby recommend that the Amended Order of Termination and Charges be affirmed; and that the proposed decision shall become effective upon the date of approval by the Civil Service Commission.

**Motion by Commissioner Fletcher to approve the decision by the Commission; seconded by Commissioner Coleman. Motion passed with all in favor.**

## **SELECTION PROCESS**

### **Appeals**

8. **2024-031**, Staff Accountant, Office of County Counsel, appealing his non-selection for a lateral transfer to Staff Accountant by the Health and Human Services Agency.

RECOMMENDATION: Deny Request for a hearing.

**Withdrawn**

## **EXTENSION OF TEMPORARY APPOINTMENTS**

9. Registrar of Voters

2 Human Resources Assistants: **2024-032** and **2024-033**

**Ratified.**

## **INFORMATION**

10. **2024-002**, Equipment Operator, withdrawal of appeal of a Final Order of Suspension and Charges from the Department of Public Works. (Commissioner Fletcher)

**Withdrawn.**

11. David Arreguin, Esq., on behalf of **2023-030**, former Sheriff's Detentions Licensed Vocational Nurse, withdrawal of appeal of an Order of Termination and Charges from the Sheriff's Department. (Commissioner Smith)

**Withdrawn.**

ADJOURNED: **3:01 p.m.**

**ASSISTANCE FOR THE DISABLED:** Agendas and records are available in alternative formats upon request. Contact the Civil Service Commission office at (619)531-5751 with questions or to request a disability-related accommodation. Individuals requiring sign language interpreters should contact the Americans with Disabilities Coordinator at (619)531-4908. To the extent reasonably possible, requests for accommodation or assistance should be submitted at least 24 hours in advance of the meeting so that arrangements may be made. An area in the front of the room

is designated for individuals requiring the use of wheelchair or other accessible devices.